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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
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BILL ANALYSIS

TOPIC: Loan Officer Registration

SPONSOR: Senator Richardville, package lead

COMMITTEE: House Banking and Financial Services

Analysis Done: January 29, 2008

Senate Bill Numbers:

SB 826 (H-1) (Richardville)-Mortgage Industry Advisory Board
SB 827 (S-1) (Richardville)-Code of Criminal Procedure Amendments
SB 828 (S-1) (Clarke)-Definitions: Loan Officer, Loan Officer Registrant and Origination
SB 829 (S-2) (Stamas)-Loan Officer and Registrant Renewals
SB 830 (S-1) (Hunter)-License Fees
SB 831 (S-1) (Olshove)-Licensee/Loan Officer/Registrant surrender
SB 832 (S-1) (Cassis)-Loan Officer Registrant Prohibitions/Disclosures
SB 833 (S-1) (Sanborn)-Penalties

House Bill Numbers:

HB 5287 (Jackson) Loan Officer Compensation
HB 5288 (Coulouris) Loan Officer Registration Requirements
HB 5289 (Clemente) OFIS Notification of relationship change
HB 5290 (Robertson) Commissioner Powers
HB 5291 (Booher) OFIS Investigations

- (1) SB 827 is tie-barred to SB 833
- (2) SB 833 and all remaining bills in the package (House and Senate) are tie-barred to each other.

POSITION

The Office of Financial and Insurance Services (OFIS) supports this legislation.

PROBLEM/BACKGROUND

Over the past 20 years, the mortgage loan industry has become a very dynamic segment of the financial services marketplace. Rapid growth has been fueled by financing from across the globe.

In recent years, products that may have been entirely suitable and appropriate in certain circumstances, have been sold to consumers who do not appear to have understood the nuances of the contract they entered into or the downstream impacts – which sometimes don't present themselves for years after the parties leave the closing table. A majority of those getting a mortgage loan will do so through a broker, a transactional specialist that may or may not ever deal with a given consumer on more than one instance.

In an ideal world, responsible sellers of mortgage products would be principally guided by what is good for their customers. They would provide a customer access to capital in exchange for reasonable compensation for the specialized service that they provide.

Although many within the mortgage brokering community make every effort to “do right by their customers” by providing them access to reasonably priced mortgages that are free of onerous contract provisions...it is the case that there are bad actors who have infiltrated this industry and who are selling their unwitting customers products that contain features that are entirely unsuitable. Additionally, many consumers appear to be unaware that Loan Officers are commissioned sales agents that are not obligated to act in their client's best interest. This problem has become more pronounced as the transaction and products have become more complicated.

Concerns regarding the lack of direct regulation of loan officers have existed for some time – including concerns over criminal background checks, knowledge of state and federal laws, and the ability of bad actors to be identified and effectively removed from the industry.

DESCRIPTION OF THE BILL PACKAGE

Unless otherwise noted, all bills amend the Mortgage, Brokers, Lenders, and Servicers Licensing Act (MBLSLA).

SB 826- creates the Mortgage Industry Advisory Board consisting of seven individuals appointed by the Commissioner: two (from a list of three) via recommendations from the trade association representing Michigan mortgage lenders, two (from a list of three) from recommendations from the trade association representing Michigan mortgage brokers and three directly by the Commissioner (two who provide or purchase services from registrants and one representing lenders, brokers or servicers). The Board is to review and make recommendations to the Commissioner regarding the courses and instructors loan officers and applicants must take; materials to be used, and attendance verification procedures for electronically taking a class.

SB 827- removes general violations of the Mortgage Brokers act from being classified as a felony under the Code of Criminal Procedure.

SB 828- defines a loan officer as officer as an employee of 1 broker, lender or servicer originating mortgage loans and not an employee of a depository financial institution or subsidiary or affiliate of the depository financial institution. A loan officer registrant is a registrant as currently registered under section 2A (HB 5288), of the MBLSLA.

SB 829- section 2B provides that loan officer registrations are valid for one year, expiring annually on December 31. Renewals must be submitted annually on a Commissioner-prescribed form by December 1 of the year of the current registration, and accompanied by the fee established by the Commissioner. Starting with the second annual renewal, certification of 6 hours of course work (approved by the Commissioner) pertaining to residential mortgage lending that includes at least 1.5 hours related to legal and regulatory compliance and 1 hour related to ethics and fraud prevention must be included. Loan officer registrations and renewals are to be submitted to OFIS by the licensee with an affidavit from the loan officer registrant they have undergone a successful criminal background check. Renewals will not be issued for loan officers who have been convicted or pled no contest to any felony or to a felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction or securities within 10 years of a renewal application. Loan officer registrants' renewals are provided for if reciprocal agreements have been entered into with the commissioner by other states.

SB 830- requires the loan officer registrant to pay an annual fee established by the Commissioner sufficient to defray the cost of act administration and enforcement. The fees collected under the act are to be deposited into a restricted fund established in the Department of Treasury and provided to the Commissioner to be used only to administer and enforce the act. Funds remaining in the account at the end of a fiscal year do not revert to the general fund but are carried over into the next fiscal year.

SB 831- allows a loan officer or loan officer registrant to surrender a license. They are still held responsible for contracts entered into prior to the effective date of surrendering the license or registration.

SB 832- prohibits a loan officer registrant from engaging in fraud, deceit, or material representation with transactions governed by this act. It also prohibits a loan officer registrant from being convicted or pleading no contest to a felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction or securities. Prohibits a loan officer from withholding information from the Commissioner that would otherwise make him/her ineligible for registration or renewal. Requires loan officers to provide information requested by the Commissioner pursuant to a registration or renewal.

SB 833- prohibits an individual from acting as a loan officer unless they are registered. Fines of up to \$15,000 and imprisonment of up to one year or both may be assessed. The Commissioner may assess a civil fine of up to \$1000 against a loan officer registrant (or one controlling the loan officer registrant) for violations of the act. Revocations of loan officer registrants by the Commissioner for violating the provisions of SB 832 are provided.

HB 5287- provides for compensation for those originating a mortgage loan only if they are loan officer registrants; compensation may only be paid by the licensee or registrant.

HB 5288- sec 2A is added that allows individuals working as loan officers to apply for registration within 90 days after the beginning of their relationship with the broker, lender or servicer. They must attest on the application whether they have been convicted or pled no contest to a felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction or securities. It also allows them to perform the services of a loan officer if fingerprints for a criminal records check have been submitted to the employer and the employer has submitted them to the law enforcement agency conducting the check; it requires the completion and certification of the required coursework and prohibits the use of the term loan officer, loan originator, mortgage loan officer or mortgage loan originator by anyone that is not a loan officer registrant.

HB 5289- adds sec 2C that provides for written notification by the loan officer and mortgage broker to the Commissioner within 10 days if the relationship between the two has been terminated

HB 5290- loan officers are subjected to the general supervision and control of the Commissioner, along with mortgage brokers, mortgage lenders and mortgage servicers. Allows for revocation and suspension of a loan officer registration; allows the Commissioner to bring an action in Ingham County Circuit Court against if violations of the act are found, and allows the Commissioner to advise the attorney general or the prosecuting attorney in the county in which the loan officer is conducting business, if the act is being violated.

HB 5291- allows OFIS to complete an investigation in a reasonable amount of time. If no violations are found in an investigation, the complaint cannot be used in a subsequent action to penalize the person against whom the complaint was filed. OFIS will forward a copy of the investigation results to both the complainant and the person against whom the complaint was filed against.

SUMMARY OF ARGUMENTS

Pro

The proposed legislation would require mortgage loan officers take pre-registration training, pass an exam, obtain registration with the State, pass a background check and criminal check, and attend regular continuing education sessions. It creates a Mortgage Industry Advisory Board responsible for advising the Commissioner on appropriate training for loan officers. These mechanisms will improve the professionalism amongst loan officers, strengthening OFIS oversight against individual loan officers and reinforce existing oversight that brokers have over loan officers they do business with.

Con

The legislation permits an individual to work as a loan officer for up to 90 days before she or he even has to apply to be a loan officer registrant. This would allow rogue loan officers to work with a series of mortgage brokers for up to 90 days each without ever applying for registration or being required to have a background check. Once a loan officer applies to be registered, the legislation allows him or her to continue to work as a loan officer while his or her application is pending, without a completed background check, as long as a background check has been initiated. There was an agreement in the Senate workgroup to fix these problems in the House bills, but due to time pressure, these changes were not incorporated into the substitute House bills. Participants in the Senate workgroup also agreed to fixes for several problems in the House bills related to the grandfathering of existing loan officers as registrants and to the parameters for background checks, but these fixes are also not in the substitute House bills. Without these fixes, it will be more difficult for OFIS to effectively register and track loan officers.

The loan officer registration provisions in these bills affect only people who originate loans under the Mortgage Brokers, Lenders and Servicers Act. Until the loan officer registration provisions are also tied to the Secondary Mortgage Loan Act and the Consumer Financial Services Act, mortgage brokers who wish to avoid registering their loan officers, could just move their license from the MBLSA to the CFSA, and licensees and registrants under the SMLA will not have to register their loan officers.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services:

Budgetary: OFIS has requested an additional appropriation of 5 FTEs for its FY 09 budget to administer the loan officer registration provisions.

Revenue: OFIS will collect restricted revenue each year from loan officer registrants in an amount sufficient to cover the costs of administering the loan officer registration provisions.

Comments:

(b) To the Department of Labor and Economic Growth: None known.

Budgetary: Through the DLEG budget process, OFIS has requested an additional appropriation of 5 FTEs for its FY 09 budget to administer the loan officer registration provisions.

Revenue: OFIS will collect restricted revenue each year from loan officer registrants in an amount sufficient to cover the costs of administering the loan officer registration provisions.

Comments:

(c) To the State of Michigan:

Budgetary: None known.

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

None known.

ANY OTHER PERTINENT INFORMATION

ADMINISTRATIVE RULES IMPACT



Ken Ross
Acting Commissioner

1-31-08
Date